

[Opinion received by email by the Communications Authority on 4 April 2014]

Submission to the Public Consultation Exercise for the Renewal of the Domestic Free Television Programme Service Licences of Asia Television Limited (“ATV”) and Television Broadcasts Limited (“TVB”)

Introduction

PCCW Media Limited (“PCCW”) and HK Television Entertainment Company Limited (“HKTVE”) welcome the opportunity to submit these comments in relation to the licence renewal applications of the two Domestic Free Television Programme Service (“Free TV”) licensees, namely ATV and TVB. PCCW holds a Domestic Pay Television Programme Service Licence. HKTVE has been granted an “approval-in-principle” (“AIP”) for a Domestic Free Television Programme Service Licence.

PCCW and HKTVE note that the two current Free TV licences are expiring in November 2015. In accordance with the Broadcasting Ordinance and the established practice, the CA has initiated an assessment on the performance of the two licensees during the current licence term, including conducting a series of public meetings to collect views and comments.

Our Comments :

PCCW as a broadcasting licensee and HKTVE as the holder of an AIP are pleased to submit these comments for the consideration of the Communications Authority.

1. Licensing criteria and assessment

We note that the Broadcasting Ordinance specifies that the CA makes recommendations to the Chief Executive in Council (“CE-in-C”) on applications for and renewal of domestic free television programme service licences and domestic pay television programme service licences. Thereafter the CE-in-C makes the licensing decision.

The CA has issued guidelines for the application of a Free TV licence including the filing requirements and the assessment criteria employed by the CA. HKTVE can attest that the licence application requires the submission of substantial material and that the assessment criteria are comprehensive. However it is noted that there is no published guidelines for licence renewal applications or any renewal grant assessment criteria.¹

The lack of guidelines for a licence renewal can be explained by the fact that the Government has stated that there is no legitimate expectation of any licence renewal. Thus, new applicants and licensees seeking a renewal must be subject to the same filing requirements and assessment. Of course, licensees seeking a renewal have a track record of investments, programming, service quality and compliance which will assist the CA, but the filing requirements and assessment criteria do not change.

It is therefore the view of PCCW and HKTVE that it is of critical importance that the filing requirements and assessment criteria to be employed by the CA be clearly stated as indicated above. The renewal process cannot be safe unless this fundamental first step is taken.

2. Consistency in regulatory assessment

PCCW and HKTVE would respectfully suggest that this licence renewal exercise for ATV and TVB should substantially match the process just completed by HKTVE. That is, all assessment criteria applied to HKTVE, Fantastic TV and CTI in their licence applications also be applied by the CA to the renewal applications. PCCW and HKTVE can see no basis to apply disparate regimes for the same licence. The only difference will be the availability of a track record (good or bad) which may be relevant to some of the assessment criteria.

PCCW and HKTVE take no view as to the renewal of the ATV and TVB licences. However, under the assessment criteria employed for HKTVE, and with reference to the track records of each renewal applicant, it certainly is within the realm of possibility that the (a) programming ; (b) service quality;

¹ Reference may be made to the various legislative council briefs on licence renewals but these briefs are neither guidelines nor statutory in nature. See in particular the CA's Guidance Note for Free TV licence application.

and (c) compliance and management record of one of the applicants would not justify a positive recommendation by the CA.

3. Equitable access to public resource - spectrum

One of the key objectives of the Broadcasting Ordinance is to bring attractive and high quality Free TV programming to Hong Kong viewers. This can be achieved by competitive entry and the CE-in-C has now granted an AIP to two entities in order to further that objective.

The regulatory regime for Free TV has two parts, both overseen by the CA: the first is the service (i.e. the programming or content) and the second is transmission (e.g. spectrum). Content is regulated under the Broadcasting Ordinance, licences, codes of practice, etc. The transmission of a broadcasting service is licensed under the Telecommunications Ordinance. While separately licensed, the means of transmission (e.g. spectrum) is directly related to the number of households that will be able to view the broadcasting service. This relationship between service and spectrum is critical as spectrum ensures the widest possible household coverage. This is important as the Government has yet to agree to provide HKTVE with the spectrum necessary to reach all households and to compete on a level playing field with ATV and TVB.

To be clear, the current situation is as follows:

- ATV and TVB have Free TV licences and they employ spectrum.
- The AIPs granted to HKTVE and Fantastic TV do not include spectrum.
- HKTVE and Fantastic TV are expected to compete via fixed networks, which have for a variety of reasons limited coverage.
- Spectrum is a scarce public resource.
- Under Government policy, there is no legitimate expectation of renewal or continued access to spectrum.
- ATV and TVB now have renewal applications pending (and the current licences expire in 2015).
- Accordingly, there is no reason for HKTVE to not have an equitable opportunity to obtain spectrum. That is, there is no basis to discriminate against HKTVE as to the access to a scarce public resource. The current spectrum allocated to Free TV can be equitably allocated

among the new AIP licensees and renewing licensee(s), effective in 2015 when the current broadcasting licences expire.²

- Without equitable access to spectrum there will not be a level playing field, competition will not thrive, and viewers will not get the quality programming they deserve.

4. Competition eases the need for strict regulations

With HKTVE's entry (and in particular new entry with spectrum), it can be anticipated that there will finally be actual market competition. Each licensee will have the commercial interest to offer appealing programming to viewers so as to drive viewership and hence advertising.

Currently, the broadcasting market is heavily regulated with ATV and TVB subject to substantial reporting, content and other requirements. While heavy regulation may be appropriate for dominant players such as TVB, such regulation is not appropriate for the new entrants such as HKTVE (or Fantastic TV) or far weaker entities such as ATV if it obtains a licence renewal. Such heavy regulation may be found in legislation, licences, guidelines and codes of practice, although this request for less regulation does not include those regulations dealing with decency or propriety.

It is time to let the new entrants operate in a market where they can invest, innovate, experiment and to let the market deliver benefits to viewers, and for the industry to flourish. The current approach has not resulted in a broadcasting environment that entertains, informs or educates the viewing public or that is responsive to the diverse needs and aspirations of viewers. In short, the current duopoly regime and its heavy handed regulatory approach is broken; its time to fix it with robust entry and less regulation. While statutory burdens may not be lifted in the short term, licensing requirements and codes of practice can be lightened now in the context of these Free TV renewals and the license terms of the two Free TV AIP's.

² This request for equitable access to spectrum is totally consistent with the Government's Spectrum Policy Framework.

5. The growth of New Media

The evolution of 'new media' in which non-traditional means such as the internet and mobile devices are employed by the public to obtain information and entertainment is an irreversible trend. More television-like content is therefore increasingly consumed outside of the traditional Free TV broadcast channels. This can have an impact on viewing habits, eyeballs, revenues, etc as competition from new sources arises. This also calls into question the relevance of traditional Free TV restrictions (such as time-of-the-day genre, advertising duration, commercial reference etc) when no such restrictions exist in the parallel new media and internet universe.

The traditional content regulation model is no longer adequate or appropriate for regulating the content available to the public. It is therefore important that the regulations for Free TV be reviewed. To encourage creativity, investment and innovation, it would be appropriate to modernise Hong Kong's content regulation which today acts only to limit investment, innovation and benefits to Free TV viewers.

Conclusions

The licensing regime in terms of filing requirements and assessment criteria must be clarified. The assessment criteria employed for the AIP grants to HKTVE and Fantastic TV should be employed for the pending renewals of ATV and TVB. These assessment criteria and the track records of the two incumbents would determine the outcome of the two renewal applications. ATV, TVB and the two AIP grantees should be treated equally and on a non-discriminatory basis as regards access to spectrum (which is a scarce public resource). Regulation on the new entrants should be substantially relaxed. Separately, the entire regulatory regime should be reviewed.

Respectfully submitted by :

PCCW Media Limited & HK Television Entertainment Company Limited